dence which would justify the court forming even a provisional opinion that the Home Secretary has not genuinely deemed it to be conducive to the public good that the applicant should be deported. I have gone into the matter in this detail because I think that when such an allegation of bad faith is made and the liberty of the subject is involved, the court should examine the grounds of the allegation with the help of such material as is before it, and drawing any reasonable inferences of fact therefrom. The alternative would be to say that the claim for privilege made by the Crown precludes a really satisfactory inquiry and therefore none should be attempted. This, I think, would be wrong."

This passage puts his earlier observations in context and shows that the Lord Justice did not intend to cast doubt upon the burden that lay upon him who asserted bad faith to at least establish a *prima facie* case. This is the correct approach. He who asserts bad faith has the burden of proving it, mere suspicion is not enough. In deciding whether the burden is discharged, the court will consider all the evidence before it, including any explanation given by the Minister and any inference to be drawn from the failure to give an explanation. Their Lordships can see no reason to suppose that this was not the approach adopted in the Federal Court.

Secondly, there is no reason to suppose that the courts below did consider that the material placed before them by the appellant raised the suspicion of bad faith. They rehearsed the appellant's arguments in the judgments but did not say that they were suspicious of the respondent's motives.

Thirdly, unlike the case of *Soblen* in which discovery had been refused, no attempt was made by the appellant, either through a request for discovery or to cross-examine upon the respondent's affidavits, to probe into the Foundation's reasons for requesting the compulsory acquisition of her property.

This was an allegation of bad faith founded on scanty evidence. Their Lordships are not surprised that that evidence was held to be insufficient to discharge the burden of proof upon the appellant and can find no fault in the judgment of the Federal Court.

For these reasons their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Herbert Smith & Co.; Stephenson Harwood.*

SINGAPORE REPORTS

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Lai Kew Chai, Thean & Chua JJ.) October 9, 1985]

[Singapore – Criminal Appeal No. 9 of 1985]

Jurisdiction – High Court – Original criminal jurisdiction of – Meaning of – Supreme Court of Judicature Act (Cap. 15), s. 44(1) – Meaning of.

Criminal Law & Procedure – Original criminal jurisdiction of High Court – Meaning of – Supreme Court of Judicature Act (Cap. 15), s. 44(1).

This was an appeal against the refusal of the learned Chief Justice to reserve for the decision of the Court of Criminal Appeal nine questions of law of public interest which arose in the course of six Magistrate's appeals which were determined by the Chief Justice. The appeal concerned the statutory interpretation of section 44(1) of the Supreme Court of Judicature Act, Cap. 15 ("the Act"). The Public Prosecutor contended that this court had no jurisdiction to entertain the appeal on the ground that the learned Chief Justice in refusing to reserve the questions of law under section 60(1) of the Act was exercising the appellate criminal jurisdiction of the High Court or that such a decision of refusing to reserve the questions of law was not "a decision made by the High Court in the exercise of its original criminal jurisdiction" within the meaning of section 44(1) of the Act.

The appellants were arraigned before the District Court in a joint trial on five charges. In two charges, the appellants were separately charged for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code. In the other three charges, they were jointly charged that in furtherance of a common intention they had fraudulently delivered without adequate consideration to third parties the property of the Workers' Party in the three cheques knowing it to be likely that they would thereby prevent the distribution of the property among the creditors of the Workers' Party, which were offences punishable under section 421 read with section 34 of the Penal Code. The appellants were acquitted and discharged on all charges with the exception of that relating to the $400 cheque wherein the learned Senior District Judge convicted the appellants and sentenced each to pay a fine of $1,000.

The Public Prosecutor appealed to the High Court against the acquittals and the sentences. The appellants appealed to the High Court against their convictions. The appeals were heard by the learned Chief Justice who ordered a new trial before another District Judge in respect of the false declaration charges and who found the appellants guilty in respect of the charges relating to the $2000 and $200 cheques and sentenced each of them to pay a fine of $1,000 in respect of each charge and in default to serve imprisonment for a period of three weeks. The Public Prosecutor's appeal against the sentences was dismissed.

In late April, 1985, the appellants by criminal motion moved the High Court "for an order that the decisions of the High Court on the questions of law particularised in the affidavit in support be reserved for the decision of the Court of Criminal Appeal pursuant to section 60 of the Act". The learned Chief Justice dismissed the criminal motion (see [1986] 1 M.L.J. 123). The issue in this case is whether the decision of the Chief Justice is appealable or final.

Held, dismissing the appeal: (1) the decision of the learned Chief Justice in refusing to reserve the questions of law was not a "decision made by the High Court in the exercise of its original jurisdiction" within the meaning of that expression in section 44(1) of the Act;

(2) the Court of Criminal Appeal is a creature of the Act and it has no powers other than those conferred upon it by the Act;

(3) the all-embracing original criminal jurisdiction of the High Court under section 15 of the Act is not in all cases exercised by the High Court but the administration of criminal justice in respect of the less serious criminal cases, generally those cases not involving the sentence of death or life imprisonment, is entrusted to the Subordinate Courts. The exercise of the original criminal jurisdiction of the High Court involves generally the more serious criminal cases or such less serious criminal cases as may be transferred from the Subordinate Courts to the High Court;

(4) the dearth of authority reflects in part the long accepted view of the legal profession that appeals from the Subordinate Courts end in the High Court and that a decision not to reserve any question of law was part and parcel of the exercise of the appellate criminal jurisdiction of the High Court.

[**Editorial Note**: Reference may be made to the article "Jurisdiction of Federal Court to hear Application under section 66 of the Court of Judicature Act, 1964" by Professor Ahmad Ibrahim at [1981] 1 M.L.J. lxxvii.]

Cases referred to:

(1) *Gurbachan Singh* v. *Public Prosecutor* [1967] 2 M.L.J. 220.
(2) *Kulasingam* v. *Public Prosecutor* [1978] 2 M.L.J. 243.
(3) *R.* v. *Jefferies* [1969] 1 Q.B. 120.
(4) *Yap Ee Kong* v. *Public Prosecutor* [1981] 1 M.L.J. 144.
(5) *Public Prosecutor* v. *Lim Joo Soon* [1981] 1 M.L.J. 107.

CRIMINAL APPEAL.

J.B. Jeyaretnam (*Subhas Anandan* with him) for the appellants.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): This was an appeal against the refusal of the learned Chief Justice to reserve for the decision of the Court of Criminal Appeal some nine questions said to be questions of law of public interest which arose in the course of six Magistrate's Appeals which were determined by the Chief Justice. The appeal turned on the statutory construction of section 44(1) of the Supreme Court of Judicature Act (Cap. 15) ("the Act") under which it was contended on behalf of the Public Prosecutor that we had no jurisdiction to entertain the appeal on the ground that the learned Chief Justice in refusing to reserve the questions of law under section 60(1) of the Act was exercising the appellate criminal jurisdiction of the High Court or that such a decision of refusing to reserve the questions of law was not *"a decision made by the High Court in the exercise of its original criminal jurisdiction"* (emphasis added) within the meaning of that critical expression in section 44(1) of the Act. At the conclusion of arguments on this preliminary point of law, which had to be dealt with before, if at all, the hearing of the merits could be embarked upon, we were unanimously of the view that we had no jurisdiction to hear and determine the appeal which we accordingly dismissed. We now give our reasons.

The facts and the course of the prosecution, trials and convictions of the appellants before and by the District Court and by the High Court in exercise of its appellate criminal jurisdiction may be stated within a reasonably brief compass. Central to the proceedings were (a) the appointment on June 1, 1982 by the High Court of a receiver to receive the assets of the Workers' Party, a political party of which the appellants were respectively the Chairman and the Secretary-General, which was an execution proceeding invoked by a judgment creditor to recover the costs then owed by the Workers' Party; and (b) the appellants' disposal of the proceeds of three cheques for the sums of $2,000, $200 and $400 which were all drawn in favour of the Workers' Party as the payee in the six months preceding the appointment of the receiver but which, though the property of the Workers' Party, were not paid into the bank account of the Workers' Party but were either endorsed over or altered in one case by the drawer in circumstances in which the Workers' Party did not receive any consideration for the proceeds nor were the transactions reflected in the accounts of the Workers' Party.

In the course of the receivership, the receiver submitted his accounts to the High Court for the purpose of passing them. To his affidavit in support was annexed a declaration jointly made by the appellants as permitted by Order 41 rule 5(2)

of the Rules of Supreme Court, 1970. But the declaration was not made in the form prescribed in the Schedule to the Statutory Declaration Act, 1835 which by section 2 of the Singapore Statutory Declarations Act was deemed to be in force in Singapore. Briefly summarised for present purposes, the appellants' joint declaration stated that the receipts and payment account and the income and expenditure account both for the periods between January 1, 1982 and June 16, 1982 and the balance sheet as at June 16, 1982 of the Workers' Party, which were drawn up by the Treasurer of the Workers' Party and exhibited in the High Court, reflected "a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified."

The $2,000 cheque, as endorsed, was delivered by the first appellant to a firm of solicitors in February 1982 and its proceeds were utilised to pay a judgment debt, not of the Workers' Party, but of one Madam Chiew, who was the mother of the second appellant's election agent in the December 1980 General Elections. The $200 cheque, as endorsed, was paid by the first appellant into his personal account with the Bank of America. The $400 cheque, as altered by the drawer, was encashed by an unknown person. The fact of the receipts of these cheques did not appear in any of the accounting records of the Workers' Party nor were they referred to in the aforesaid accounts prepared by the Treasurer of the Workers' Party.

In the event, the appellants were arraigned before the District Court in a joint trial to answer to five charges. In two charges, they were separately charged for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code. In the other three charges, at the heart of which were the proceeds of the three cheques, the appellants were jointly charged that in furtherance of a common intention of them both they had fraudulently delivered without adequate consideration to third parties the property of the Workers' party in the three cheques knowing it to be likely that they would thereby prevent the distribution of the property amongst the creditors of the Workers' Party, which were offences punishable under section 421 read with section 34 of the Penal Code.

At the conclusion of the trial in the District Court, the learned Senior District Judge acquitted and discharged both appellants on the false declaration charges and the two charges relating to the $2,000 cheque and the $200 cheque. But the learned District Judge convicted the appellants on the charge relating to the $400 cheque and sentenced each to pay a fine of $1,000.

The Public Prosecutor in five Magistrate Appeals appealed to the High Court against the acquittals and the sentences. Both the appellants appealed to the High Court against their convictions. The appeals were heard by the learned Chief Justice who (a) ordered a new trial before another district judge in respect of the charges relating to the false declaration; (b) found the appellants guilty in respect of the charges relating to the $2,000 cheque and the $200 cheque and sentenced each of them to pay a fine of $1,000 in respect of each charge and in default to serve imprisonment for a period of three weeks; and (c) dismissed the appeal of the Public Prosecutor against the inadequacy of the fines imposed. In doing so, the learned Chief Justice set out his reasons in a long judgment.

In late April this year, the appellants by Criminal Motion No. 23 of 1985 moved the High Court "for an order that the decisions of the High Court on the question(s) of law particularised in the affidavit in support be reserved for the decision of the Court of Criminal Appeal pursuant to section 60 of the Act." The material paragraph of the second appellant's affidavit set out the questions of law in the following terms:

"(i) *Magistrate's Appeals Nos. 8 and 9 of 1984*

(a) Whether the declaration by the respondents was a declaration within the scope and meaning of section 199 of the Penal Code;

(b) Whether Mr. Daljit Singh was authorised by law to receive the said declaration from the respondents.

(ii) *Magistrate's Appeals Nos. 11 and 13 of 1984*

(a) Whether the property in the cheques for $2,000 and $200 was in the Workers' Party before the cheques were negotiated;

(b) On whom was the onus to prove the property of the cheques in the Workers' Party and whether such onus was discharged by the party on whom it lay on the whole of the evidence adduced before the court;

(c) Whether the said onus shifted at any time from one party to the other, alternatively, whether there was any onus on the respondents at any stage of the trial to prove that the property in the said cheques was not in the Workers' Party;

(d) Whether on the whole of the evidence adduced before the court the Prosecution had discharged the onus on it to satisfy the court that the respondents fraudu-

lently transferred the property in the said cheques assuming the property in the said cheques was in the Workers' Party;

(e) Whether the High Court was right and justified on well established principles of law in disturbing the very careful findings of fact made by the trial judge before acquitting the respondents on the charges.

(iii) *Magistrate's Appeals Nos. 14 and 15 of 1984*

(a) Whether the property in the cheque for $400 remained with the Workers' Party after the end of May 1982 and in particular was it so on July 2, 1982 when the proceeds on the cheque were realised;

(b) Whether the whole of the evidence adduced before the court was capable in law to support the finding of a common intention between the appellants.

As required by the terms of section 60(1) of the Act, the appellants' application was heard before the learned Chief Justice who, at the conclusion of the hearing of the criminal motion, dismissed it. The learned Chief Justice expressed the opinion that none of the questions set out were questions of law and that, in any event, on the assumption that they were questions of law he was of the opinion that none of them were questions of "public interest" within the meaning of that expression in section 60(1) of the Act.

The issue in this appeal is whether the decision of the learned Chief Justice in refusing to reserve the questions of law is appealable or is final. This question turns on the true meaning of 15 words, namely, "any decision made by the High Court in the exercise of its original criminal jurisdiction" in section 44(1) of the Act which sets out our jurisdiction as the Court of Criminal Appeal and which has been in its present terms since the enactment of the Supreme Court of Judicature (Amendment) Act, No. 58 of 1973 which came into operation on February 11, 1974: see Gazette No. S41 of 1974. The true meaning of the critical 15 words can be gleaned only by an analysis of the statutory enactments relating to the constitution and criminal jurisdictions of the superior courts of judicature and of the subordinate courts of Singapore. Such an analysis requires a study of the Act, the Subordinate Courts Act (Cap. 24) and the relevant provisions of the Criminal Procedure Code.

The Act, as stated in the preamble, was enacted to consolidate the law relating to the constitution and powers of the superior courts of judicature in Singapore. By section 3 it is provided that "there shall be a Supreme Court in Singapore" with "such powers as is conferred by this Act." The Supreme Court consists of the High Court which, *inter alia*, "shall exercise original and appellate criminal jurisdiction", the Court of Appeal having power over civil appeals and the Court of Criminal Appeal "which shall exercise appellate criminal jurisdiction": see section 7. We turn now to section 15 which provides that the High Court shall have jurisdiction to try "all offences" committed within Singapore, on the high seas on board any ship or aircraft registered in Singapore or committed by any citizen of Singapore on the high seas or any aircraft or by certain other "persons" as defined therein. Section 15 is preceded by the words "Original Jurisdiction". Section 19 of the Act sets out the appellate criminal jurisdiction of the High Court. It is empowered to hear appeals from the District or Magistrate's Courts or to hear and determine points of law reserved by these subordinate courts according to the law of criminal procedure. Under section 184 of the Criminal Procedure Code the High Court in certain circumstances may order that a particular criminal case be transferred to and tried before the High Court.

Part V of the Act provides for the constitution and jurisdiction of the Court of Criminal Appeal which shall be duly constituted "if it consists of not less than three Judges or any greater uneven number of Judges": see section 43 under this Part.

Before we turn to section 44 under Part V of the Act, we have to say that although the High Court has jurisdiction to try "all offences" as stated in section 15 of the Act, not all of them are tried in the High Court. By section 6 of the Criminal Procedure Code (Cap. 113), it is provided that the courts for the administration of criminal justice shall be the High Court, the District Courts and the Magistrate's Courts. The criminal jurisdictions of the last two named subordinate courts are set out in the Criminal Procedure Code: see sections 50 and 51 of the Subordinate Courts Act. Generally, under section 7 of the Criminal Procedure Code, the District Court has jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed seven years or which are punishable with fine only. Under the next section in the Criminal Procedure Code, the Magistrate's Court has jurisdiction, amongst others not relevant for present purposes, to try offences for which the maximum term of imprisonment provided by law does not exceed three years or which are punishable with fine only. In respect of offences under the Penal Code, which provide for the bulk of criminal offences in Singapore, it is provided by section 9 of the Criminal Procedure Code that they may be tried, be-

sides the High Court, by any other court by which the offence is shown to be triable in the eighth column of Schedule A to the Criminal Procedure Code. Apart from trying offences under the Penal Code for which the maximum sentences prescribed are seven years or three years respectively, the District Court and the Magistrate's Court are also given jurisdiction by other laws to hear and determine proceedings in which the sentences of imprisonment prescribed do exceed the period of seven years: for example section 30 of the Misuse of Drugs Act,1973.

As we had stated earlier, appeals from the District Court or Magistrate's Court lie to the High Court which is conferred "the appellate criminal jurisdiction" by section 19 of the Act. The procedure for such appeals is provided within Chapter XXVIII and Part VII of the Criminal Procedure Code. The type of criminal appeals which lie from the High Court to the Court of Criminal Appeal depends on the scope of section 44(1) of the Act to which we must now return.

We set out below the entire section 44 of the Act:

"44.(1) The Court of Criminal Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.

(2) An appeal by a person convicted shall be either against the sentence or against both:

Provided that where an accused person has pleaded guilty and been convicted on such plea there shall be no appeal except as to the extent or legality of the sentence.

(3) An appeal by the Public Prosecutor shall be either against the acquittal of an accused person or against the sentence imposed upon an accused person by the High Court.

(4) An appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.

(5) The Court of Criminal Appeal shall also have jurisdiction to hear and determine matters brought before it in accordance with the provisions of section 59 or 60 of this Act."

In our view, the decision of the learned Chief Justice in refusing to reserve the questions of law was not a "decision made by the High Court in the exercise of its original criminal jurisdiction" within the meaning of that expression in section 44(1) of the Act. We are of the view that the Court of Criminal Appeal is a creature of the Act and it has no powers other than those conferred upon it by the Act. The decision was made after the conclusion of an appeal to the High Court in exercise of its appellate criminal jurisdiction and on the application of the appellants. To say that the learned Chief Justice was exercising the original criminal jurisdiction of the High Court when he refused to reserve the questions of law is to extend the meaning and scope of the "original criminal jurisdiction" of the High Court to an extent quite out of line with the statutory framework for the administration of appellate criminal justice in Singapore. The all-embracing original criminal jurisdiction of the High Court under section 15 of the Act is not in all cases exercised by the High Court but the administration of criminal justice in respect of what we may call the less serious criminal cases, generally those cases not involving the sentence of death or life imprisonment, is entrusted to the Subordinate Courts. The exercise of the original criminal jurisdiction of the High Court involves generally the more serious criminal cases or such less serious criminal cases as may be transferred from the Subordinate Courts to the High Court.

We see that section 60(4) of the Act provides that the Court of Criminal Appeal shall hear and determine the question reserved by the High Court but is silent and makes no provision for any appeal by any party aggrieved by any decision of the High Court refusing to reserve any question of law of public interest.

We have not been referred to any decision in Singapore bearing on the meaning of the critical 15 words in the sub-section. The dearth of authority reflects in part the long accepted view of the legal profession that appeals from the Subordinate Courts end in the High Court and that a decision not to reserve any question of law was part and parcel of the exercise of the appellate criminal jurisdiction of the High Court. We were, however, referred to four Malaysian cases for their highly persuasive authority. We found that the first two decisions of the Malaysian Federal Court were directly helpful. The first case, *Gurbachan Singh* v. *Public Prosecutor*,[1] turned on the interpretation of sub-section 50(1) of the Malaysian Courts of Judicature Act, 1964 which conferred on the Malaysian Federal Court jurisdiction "to hear and determine an appeal by a person convicted by any High Court in exercise of its original jurisdiction," and which in terms was equivalent to the predecessor of sub-section 44(1) of the Act. The second case, *Kulasingam* v. *Public Prosecutor*,[2] dealt with the interpretation of the same sub-section in the Malaysian legislation but which, as amended

by Act A328, was substantially equivalent to section 44(1) of the Act. Azmi C.J. (Malaya) (as he then was) in the first case said at page 221 F/G rhc that the Federal Court had "jurisdiction to hear and determine an appeal from the decision of a lower court in a criminal matter only when the matter (was) sent up to (the Federal Court) by an order of the High Court. The right of appeal under the (Malaysian) Constitution (was) a creature of statute and unless there (was) a special provision there would be no inherent right". This proposition harked back to what was said by the English Court of Appeal in *R.* v. *Jefferies*[3]; also see Vol. 11, *Halsbury's* Laws of England, 4th edn., para. 611 and notes 4 and 11.

In the second case, the former Lord President of Malaysia, Suffian L.P., after setting out section 50(1) of the Malaysian Courts of Judicature Act, 1964, as amended by Act A328, said: "By no stretch of the imagination can it be said that the accused's application comes within the above, seeing that what he is dissatisfied with is a refusal by the learned High Court judge to grant a certificate under section 66 of the Courts of Judicature Act."

Counsel for the appellants made two submissions and, if we understood him correctly, they were as follows. First, he referred to the amendment of section 44(1) of the Act which was effected on February 11, 1974 and argued that the deletion of the words in the previous section 44(1) of the Act, namely, "any appeal by a person convicted" and its substitution by the words "*any* appeal against *any* decision made" (emphases were counsel's), had widened the scope of the subsection to include a refusal of the High Court to reserve the questions of law under section 60(1) of the Act. Secondly, counsel contended that the learned Chief Justice in making the decision he did was exercising the "original criminal jurisdiction" of the High Court. Counsel for the appellants did not draw our attention to any authority. In support of his arguments, he only tendered to us for our consideration copies of two orders made by the Malaysian Federal Court, both of which, as it subsequently became apparent, were in fact orders made in the third Malaysian case of *Yap Ee Kong* v. *Public Prosecutor*,[4] which was cited to us by the learned Deputy Public Prosecutor. In that case, the High Court had refused the application to reserve questions of law of public interest which had arisen in the course of the appeal. According to the headnotes of that case, though this was not apparent in the judgment of the Federal Court, an application was then made by way of criminal reference to the Federal Court which heard the application and dealt with the matter as an appeal. Neither *Gurbachan's* case *(supra)* nor *Kulasingam's* case *(supra)* was referred to in the judgment. The Federal Court decided to hear the case as an appeal and cited three cases which on examination appear not to have dealt with the appealability of a decision of the High Court in refusing to reserve a question of law but rather they considered and dilated on the powers of the Federal Court in the first two cases and those of the House of Lords in the third case to review the entire case after and beyond answering the questions of law reserved for their decision by the lower courts. We would add in passing that section 66(1) of the Malaysian Courts of Judicature Act, 1964, as amended by Act A530 with effect from February 23 1982, has conferred powers (both discretionary and mandatory as the case may be) on the Malaysian Federal Court to grant leave for determination by itself of any question of law of public interest. We accordingly do not think that *Yap Ee Kong's* case *(supra)* is of any assistance to the appellants.

Finally, we must refer to *Public Prosecutor* v. *Lim Joo Soon*[5] cited to us by the learned Deputy Public Prosecutor admittedly more for completeness than relevance and merely to make the point that the Malaysian Public Prosecutor had in that case in effect applied to the Federal Court for a mandatory order that the High Court do reserve the questions of law, contending that he as the Public Prosecutor was statutorily entitled *ex debito justitiae* to the order from the High Court. The fact that this matter went by way of an application for a mandatory order rather than by way of an appeal underscores the recognition that there was a problem about the lack of jurisdiction.

For these reasons, we dismissed the appeal.

Appeal dismissed.

Solicitors: *M.P.D. Nair & Co.*